

Baker

1 A G R E E M E N T

2  
3 THIS AGREEMENT is made and entered into this 30<sup>th</sup> day of  
4 September 1966, by and between THE STATE OF WASHINGTON, DEPART-  
5 MENT OF FISHERIES, hereinafter referred to as "the Department", and  
6 PUGET SOUND POWER & LIGHT COMPANY, hereinafter referred to as "Puget  
7 Power".

8 R E C I T A L S

9 1. The Department is charged, under the laws of the State of Wash-  
10 ington, with the duty of propagating, protecting, conserving, pre-  
11 serving and managing food fish and shellfish within the State of  
12 Washington.

13 2. Puget Power is a corporation organized under the laws of the  
14 State of Washington and is authorized under Federal Power Commission  
15 License No. 2150 to construct, operate and maintain a hydroelectric  
16 project, commonly known as the "Baker Project", located on the Baker  
17 River in Whatcom and Skagit Counties, Washington.

18 3. Article 33 of said license provides:

19 The Licensee shall construct, operate and maintain  
20 or shall arrange for the construction, operation and  
21 maintenance of such ladders, traps, hatcheries, or other  
22 facilities or protective devices for the purpose of con-  
23 serving fish and wildlife resources, and comply with  
24 such reasonable modifications in project structures and  
25 operations in the interest of conserving fish and wild-  
26 life resources as may be prescribed hereafter by the  
27 Commission upon recommendation of the Secretary of the  
28 Interior, the United States Forest Service and the De-  
29 partments of Fisheries and Game of the State of Washington,  
30 after notice and opportunity for hearing. In addition,  
31 the Commission may, upon recommendation of the aforesaid  
32 agencies, require the Licensee after notice and opportunity  
33 for hearing to reserve from public access such project

1 waters and adjacent project lands owned by the Licensee  
2 and to acquire or arrange for the acquisition of such  
3 other lands as may be reasonably necessary for the pro-  
4 tection and management of fish and wildlife resources  
5 affected by the project.

6 4. The parties hereto, together with the Fish and Wildlife Service  
7 of the United States Department of the Interior and Forest Service  
8 of the United States Department of Agriculture intend to define by  
9 this agreement the responsibilities and obligations of Puget Power  
10 under Article 33 of Federal Power Commission License No. 2150, above,  
11 and to provide a means of meeting these obligations and responsi-  
12 bilities insofar as they pertain to the conservation of food fishes  
13 (as defined by RCW 75.04.040) consistent with the need to maintain  
14 the food fishery resources of the Baker River at a sustained level  
15 of abundance.

16 5. The parties hereto, together with the Fish and Wildlife Service  
17 of the United States Department of the Interior and the Forest  
18 Service of the United States Department of Agriculture have conducted  
19 investigations relative to the loss of Sockeye salmon spawning  
20 grounds destroyed by reason of the Baker Project and have conducted  
21 negotiations relative to the mitigation or replacement of such  
22 losses.

23 6. The Department has contended that the appropriate means for  
24 mitigating and replacing the spawning area losses are through the  
25 construction and operation of: (1) an artificial spawning beach  
26 (1,500 fish capacity) in addition to the two spawning beaches (1,500  
27 and 100 fish capacity respectively) already constructed, operated,  
28 and maintained at Puget Power's expense, (2) an improved water  
29 supply system to successfully operate the three spawning beach  
30 complex, (3) improved downstream migrant facilities from lower Baker  
31 Dam to the area of the powerhouse tailrace. Puget Power in order  
32 to resolve the controversy in this regard will, as provided in this  
33 agreement, agree to proceed with the construction and operation of

1 said spawning beach and water supply system, and shall consult with  
2 the Department to insure that improved downstream migrant facilities  
3 are incorporated in any plans it may make for the redevelopment of  
4 the lower Baker power house. All of such facilities shall be de-  
5 signed, constructed, operated and maintained at Puget Power's expense,  
6 based upon criteria determined by the Department with the consultation  
7 and approval of the Fish and Wildlife Service of the Department of  
8 the Interior and the Forest Service of the United States Department  
9 of Agriculture.

10 NOW THEREFORE, it is agreed between the parties hereto:

11 1. TERM

12 The term of this agreement shall commence on the date hereof and  
13 end concurrently with the term of Federal Power Commission License  
14 No. 2150 for the Baker project. In the event the Baker Project shall  
15 be taken over by the United States under the provisions of the  
16 Federal Power Act, or the Baker Project shall be taken by the United  
17 States or any public agency having the power to do so under the  
18 right of eminent domain, the obligations of Puget Power hereunder  
19 shall terminate and be at an end, but the obligations of Puget Power  
20 hereunder shall be taken over and assumed by the agency taking over  
21 the project.

22 II. CONSTRUCTION OF ADDITIONAL FACILITIES

23 Puget Power will proceed forthwith to complete the design of  
24 (1) an additional artificial spawning beach, (2) improved spawning  
25 beach water supply system, and (3) extension of the downstream  
26 migrant pipe line at lower Baker Dam based upon criteria furnished  
27 to Puget Power by the Department. Upon completion of the plans and  
28 specifications and after their approval by the Department, Puget  
29 Power will proceed to construct, at its own cost and expense, the  
30 said additional facilities and necessary appurtenances. The spawn-  
31 ing beach shall be on the Upper Baker Reservoir, near the West  
32 Fork of Channel Creek and adjacent to the constructed spawning  
33 beaches (1,500 and 100 fish capacities, respectively.). The said

1 additional artificial spawning beach shall be generally similar in  
2 design to the presently constructed 1,500 fish capacity artificial  
3 spawning beach. Puget Power agrees to provide an adequate water  
4 supply for the operation of the three artificial spawning beaches,  
5 described above. Puget Power will use all reasonable means to com-  
6 plete construction of (1) the additional artificial spawning beach,  
7 and (2) the improved spawning beach and related water supply system  
8 by July 7, 1966.

9 Improved downstream migrant facilities in the area from the lower  
10 Baker Dam to the power house tailrace shall be included in any re-  
11 development plans for the lower Baker power house; to include an  
12 extension from the existing downstream migrant pipe facility by  
13 means of a covered flume to the power house tailrace. Such facilities  
14 shall satisfy Puget Power's obligations hereunder but Puget Power  
15 and the Department may agree to the construction of substitute  
16 facilities.

17 III. OPERATION AND MAINTENANCE OF SPAWNING BEACHES AND RELATED  
18 FACILITIES.

19 The obligations for the operation of the three spawning beaches  
20 and related facilities shall be divided between the parties as here-  
21 inafter set forth; however, the Department shall have general super-  
22 vision of the operation and will be responsible for direction of  
23 such operation. The obligations and responsibilities of the parties  
24 (subject to such general supervision) shall be as follows:

25 a) Responsibility of Puget Power. Puget Power shall, at  
26 its own cost and expense, perform all necessary main-  
27 tenance and repair work to the three spawning beaches  
28 and their appurtenant facilities. Puget Power shall  
29 be responsible for the operation and maintenance of  
30 the collection device and equipment for the transpor-  
31 tation of adult upstream migrant fish from the point  
32 of entrapment to the spawning beaches and the Upper  
33 Baker Reservoir. Puget Power shall be responsible

1 for the operation and maintenance of collecting  
2 devices for downstream migrant anadromous fish at  
3 both Upper and Lower Baker Dams.

4 b) Responsibility of the Department. The Department shall  
5 be responsible for the holding of adult fish in the  
6 artificial beaches during their ripening period, for  
7 the stocking rate per beach, for the care of the eggs  
8 and the fry hatched therefrom, and for their sub-  
9 sequent release into the Upper Baker Reservoir.

10 Puget Power shall maintain the spawning beaches, the downstream  
11 migrant pipeline, fish collecting devices and appurtenant facilities  
12 in good operating condition and will perform that part of the  
13 operations designated to it in a good workmanlike manner. Puget  
14 Power will<sup>continue to</sup> provide a suitable residence for one departmental employee  
15 who will operate the spawning beaches' facilities. In the event  
16 it is proposed that the residence be located on lands under the  
17 jurisdiction of the United States Forest Service, such location  
18 shall be subject to the approval of that agency.

#### 19 IV. EXPENSES OF OPERATION

20 Puget Power shall reimburse the Department for the salaries,  
21 costs and necessary traveling expenses incurred by the Department  
22 in payment of the personnel appointed and provided to accomplish  
23 the duties herein provided for. As to any amounts required to be  
24 reimbursed by Puget Power to the Department, the Department will  
25 transmit monthly to Puget Power an itemized statement setting  
26 forth salaries, costs and expenses covered by this reimbursement  
27 provision. Upon receipt of such statements, Puget Power will  
28 promptly make payment to the Treasurer of the State of Washington  
29 the amounts properly shown on such statement.

#### 30 V. LIMITATION OF LIABILITY

31 The parties hereto agree that, upon compliance with the obliga-  
32 tions and responsibilities herein contained, Puget Power will have  
33 complied with its obligations and responsibilities under Article 33

1 of Federal Power Commission License No. 2150 to construct, operate  
2 and maintain facilities for the purpose of conserving and preserving  
3 the food fishery resources of the Baker River to the extent of re-  
4 sponsibility of the Department. This agreement is without prejudice  
5 to either party's right to request reasonable modifications in project  
6 structures and operations in the interest of conserving and pre-  
7 serving the food fishery resources of the Baker River.

8 VI. OWNERSHIP OF FACILITIES

9 Full title and ownership to the facilities within the project  
10 boundaries covered by this agreement shall be and remain in Puget  
11 Power. Each of the parties hereto, their officers, agents and  
12 employees shall have full access to all portions and areas of said  
13 facilities.

14 VII. ECONOMY OF OPERATION

15 The parties agree that the facilities covered by this agreement  
16 will be operated in an efficient and economical manner with proper  
17 regard for the purposes of the facilities and to the end that the  
18 functions for which the facilities are provided may be fulfilled.  
19 The Department agrees to cooperate fully with Puget Power to economize  
20 on the use of water and power within the limits of proper and effec-  
21 tive operation of the facilities.

22 VIII. LIABILITY

23 Each party hereto shall indemnify and save harmless the other  
24 party hereto from loss or damage resulting from the acts or omissions  
25 of the other party, its officers, agents or employees. The parties  
26 agree that each party hereto is an independent contractor and not  
27 the agent or employee of the other party.

28 IX. REPORTS AND RECORDS

29 All reports, records and studies made, kept or conducted by  
30 either party hereto relative to the maintenance or operation of the  
31 facilities, or to the handling, numbers, condition or behavior of  
32  
33

1 fish utilizing or affected by the facilities will be made readily  
2 available to the other party.

3 DEPARTMENT OF FISHERIES  
4 STATE OF WASHINGTON

5  
6 Thor C. Tollefson  
7 THOR C. TOLLEFSON  
Director

8 Approved As To Form:

9 Joseph L. Craft  
10 Assistant Attorney General

11 PUGET SOUND POWER & LIGHT COMPANY

12 R. D. Kanner  
13 Vice-President

14  
15 Construction, operation and maintenance of the spawning beach  
16 and other facilities specified in Section II of this agreement, in  
17 accordance with the provisions of Sections II, III, IV, VI, VII, and  
18 IX hereof is hereby acknowledged to be a reasonable plan insofar as  
19 food fish are concerned for carrying out the requirements of Article 33,  
20 Federal Power Commission License No. 2150, set forth in Recital 3 of  
21 this agreement, and such construction, operation and maintenance is  
22 hereby approved and recommended. Sections of this agreement not  
23 listed in the above recommendation are deemed to cover matters which  
24 are solely for the consideration of Puget Power and the Department.

25 UNITED STATES DEPARTMENT OF  
26 INTERIOR, FISH AND WILDLIFE SERVICE

27  
28 D. T. McKenna  
29 ~~Regional~~ Director  
Bureau of Commercial Fisheries

30  
31 John D. Hendley  
32 Acting Regional Director JOHN D. HENDLEY  
Bureau of Sport Fisheries and  
33 Wildlife

UNITED STATES DEPARTMENT OF  
AGRICULTURE  
FOREST SERVICE

L. Herbert Stine  
Regional Forester

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